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# Message Text

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ACTION ERDA-07

INFO OCT-01 NEA-10 ISO-00 AID-05 OES-07 ACDA-10
CIAE-00 INR-07 IO-14 L-03 NSAE-00 NSC-05 EB-07
NRC-07 FEAE-00 DODE-00 SS-15 SP-02 PM-04 H-02
PA-02 PRS-01 USIA-15 ERDE-00 TRSE-00 /124 W
----------023067 011245Z /44
P R 011127Z JUL 77
FM AMCONSUL BOMBAY
TO SECSTATE WASHDC PRIORITY 7419
INFO AMEMBASSY NEW DELHI

UNCLAS BOMBAY 1563

E. O. 11652: N/A
TAGS: TECH, ENGR, PARM, IN
SUBJ: TARAPUR FUEL STORAGE

REF : STATE 150616

THERE FOLLOWS THE TEXT OF THE PROPOSED LEGAL OPINION WHICH THE IAEC PROPOSES TO PROVIDE REGARDING THE AUTHORITY OF ITS SIGNATORY TO BIND THE GOI TO ALL UNDERTAKINGS IN THE PROPOSED AGREEMENT CONCERNING THE FEASIBILITY STUDY FOR INCREASING STORAGE CAPACITY FOR SPENT FUEL AT TARAPUR.

QUOTE

MINISTRY OF LAW & JUSTICE
(DEPARTMENT OF LEGAL AFFAIRS)
BOMBAY.

1. CLAUSE 9 OF THE AGREEMENT READS AS FOLLOWS:

"GOVERNMENT OF INDIA AGREES TO INDEMNIFY AND HOLD HARMLESS ERDA, THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND PERSONS ACTING ON THEIR BEHALF INCLUDING ITS CONTRACTORS AND SUB-CONTRACTORS, AGAINST ANY AND ALL DAMAGES, LIABILITIES,
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OR COSTS INCURRED BY GOI, THE GOVERNMENT OF INDIA OR ANY OTHER PERSON WHICH MAY ARISE FROM THE USE OR APPLICATION OF THE INFORMATION PROVIDED BY ERDA OR ITS CONTRACTORS TO GOI UNDER THIS AGREEMENT; PROVIDED THAT INDEMITY WILL NOT APPLY TO ANY LIABILITY FOR VIOLATION BY GOI OR PROPRIETARY RIGHTS OR PATENT RIGHTS WITH RESPECT TO ANY PROPRIETARY OR PATENTED INFORMATION PROVIDED BY ERDA OR ITS CONTRACTORS,

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WHICH PROPRIETARY OR PATENTED INFORMATION HAS NOT BEEN SO IDENTIFIED".

CLAUSE 13 OF THE AGREEMENT READS AS FOLLOWS:

"THE SIGNATORIES TO THIS AGREEMENT REPRESENT THAT THEY HAVE COMPLETE AUTHORITY TO COMMIT THEIR RESPECTIVE GOVERNMENTS TO ALL THE UNDERTAKINGS SET FORTH IN THIS AGREEMENT".

2. MR. W. F. COURTNEY, CONSUL GENERAL, U.S.A. HAS POINTED OUT THAT U.S. GOVERNMENT NEED AUTHORITATIVE WRITTEN ASSURANCE FROM APPROPRIATE ENTITY OF GOVERNMENT OF INDIA THAT THE INDEMNITY PROVISIONS OF CLAUSE 9 ARE VALID AND ENFORCEABLE AGAINST THE GOVERNMENT OF INDIA UNDER THE CONSTITUTION AND OTHER LAWS OF INDIA, AND THAT THE PERSON SIGNING THE AGREEMENT ON BEHALF OF THE GOVERNMENT OF INDIA HAS COMPLETE AUTHORITY UNDER THE CONSTITUTION AND OTHER LAWS OF INDIA TO BIND GOVERNMENT OF INDIA TO SUCH AS AGREEMENT.

3. UNDER ARTICLE 73(1) OF THE CONSTITUTION OF INDIA THE EXECUTIVE POWER OF THE UNION EXTENDS TO THE MATTERS WITH RESPECT TO WHICH PARLIAMENT HAS POWER TO MAKE LAWS. UNDER ART.246 OF THE CONSTITUTION PARLIAMENT HAS EXCLUSIVE POWER TO MAKE LAWS WITH RESPECT TO ANY OF THE MATTERS UNCLASSIFIED



ENUMERATED IN LIST 1 IN THE VIITH SCHEDULE (IN THE CONSTI-TUTION REFERRED TO AS THE UNION LIST) ENTRY 6 OF LIST I READS:

"ATOMIC ENERGY AND MINERAL RESOURCES NECESSARY FOR ITS PRODUCTION"

THE ENTRY HAS TO BE READ IN ITS WIDEST CONNOTATION. THE ATOMIC ENERGY ACT (ACT 33 OF 1962) IS AN ACT TO PROVIDE FOR THE DEVELOPMENT, CONTROL AND USE OF ATOMIC ENERGY FOR THE WELFARE OF THE PEOPLE OF INDIA AND FOR OTHER PEACEFUL PURPOSES AND FOR MATTERS CONNECTED THEREWITH. UNDER SEC.3(F) THE CENTRAL GOVERNMENT HAS POWER TO PROVIDE FOR THE PRODUCTION AND SUPPLY OF ELECTRICITY FROM ATOMIC ENERGY AND FOR TAKING MEASURES CONDUCIVE TO SUCH PRODU-CTION AND SUPPLY AND FOR ALL MATTERS INCIDENTAL THERETO. UNDER SEC.3(G) CENTRAL GOVERNMENT HAS POWER TO DO ALL SUCH THINGS (INCLUDING THE ERECTION OF BUILDING AND EXECUTION OF WORKS AND THE WORKING OF MINERALS) AS THE CENTRAL GOVERNMENT CONSIDERS NECESSARY OR EXPEDIENT IN THE EXERCISE OF THE FOREGOING POWERS. UNDER ART.298 THE EXECUTIVE POWER OF THE UNION EXTENDS IN THE CARRYING ON

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OF ANY TRADE OR BUSINESS AND TO THE ACQUISITION, HOLDING AND DISPOSAL OF PROPERTY AND THE MAKING OF CONTRACTS FOR ANY PURPOSE. CLAUSE 9 REFERRED TO ABOVE IS DEEMED NECESS-ARY AND EXPEDIENT FOR THE PURPOSE OF EXERCISING POWERS CONTAINED IN THE ATOMIC ENERGY ACT. I AM OF THE VIEW THAT THE INDEMNITY CLAUSE IS VALID AND ENFORCEABLE AGAINST THE GOVERNMENT OF INDIA UNDER THE CONSTITUTION AND OTHER LAWS OF INDIA AND THERE IS NO CONSTITUTIONAL OR STATUTORY BAR WHICH STANDS IN THE WAY OF GOVERNMENT AGREEING TO SUCH AN INDEMNITY.

4. UNDER CLAUSE 1 OF ART.299 OF THE CONSTITUTION OF INDIA ALL CONTRACTS MADE IN THE EXERCISE OF THE EXECUTIVE POWER OF THE UNION SHALL BE EXPRESSED TO BE MADE BY THE
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PRESIDENT AND ALL SUCH CONTRACTS AND ALL ASSURANCES OF PROPERTY MADE IN THE EXERCISE OF THAT POWER SHALL BE EXECUTED ON BEHALF OF THE PRESIDENT BY SHC PERSON AND IN SUCH MANNER AS HE MAY DIRECT OR AUTHORISE. IN EXERCISE OF THE POWERS CONFERRED BY CLAUSE 1 OF ART.299 OF THE CONSTITUTION THE PRESIDENT HAS AUTHORISED THE CHAIRMAN-CUM-CHIEF EXECUTIVE, ATOMIC POWER AUTHORITY TO ENTER INTO ALL CONTRACTS AND ASSURANCES OF PROPERTY RELATING TO THE BUSINESS OF THE ATOMIC POWER AUTHORITY, ALL CONTRACTS AND INSTRUMENTS RELATING TO WORKS OF ALL KINDS. THE AGREEMENT SIGNED BY THE CHAIRMAN-CUM-CHIEF EXECUTIVE OF THE ATOMIC POWER AUTHORITY, FOR AN ON BEHALF OF THE PRESIDENT OF INDIA WILL CONSTITUTE PROPER CONTRACT ENTERED INTO BY THE GOVERNMENT OF INDIA AND WILL BIND THE GOVERNMENT OF INDIA TO THE AGREEMENT.

SD:
(V.N. LOKUR)
JT. SECRETARY & LEGAL ADVISER TO THE
GOVERNMENT OF INDIA 28.6.77

DEPTT. OF A.E. BOMBAY
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MIN. OF LAW UO NO.1810/77-ADV.BOM.
UNQUOTE.
COURTNEY

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# Message Attributes

**Automatic Decaptioning:** X
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**Channel Indicators:** n/a
**Current Classification:** UNCLASSIFIED
**Concepts:** STORAGE, NUCLEAR FUELS
**Control Number:** n/a
**Copy:** SINGLE
**Sent Date:** 01-Jul-1977 12:00:00 am
**Decaption Date:** 01-Jan-1960 12:00:00 am
**Decaption Note:**
**Disposition Action:** n/a
**Disposition Approved on Date:**
**Disposition Case Number:** n/a
**Disposition Comment:**
**Disposition Date:** 01-Jan-1960 12:00:00 am
**Disposition Event:**
**Disposition History:** n/a
**Disposition Reason:**
**Disposition Remarks:**
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**Drafter:** n/a
**Enclosure:** n/a
**Executive Order:** N/A
**Errors:** N/A
**Expiration:**
**Film Number:** D770235-0512
**Format:** TEL
**From:** BOMBAY
**Handling Restrictions:** n/a
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**Litigation Codes:**
**Litigation History:**
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**Office:** ACTION ERDA
**Original Classification:** UNCLASSIFIED
**Original Handling Restrictions:** n/a
**Original Previous Classification:** n/a
**Original Previous Handling Restrictions:** n/a
**Page Count:** 3
**Previous Channel Indicators:** n/a
**Previous Classification:** n/a
**Previous Handling Restrictions:** n/a
**Reference:** 77 STATE 150616
**Retention:** 0
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**Review Exemptions:** n/a
**Review Media Identifier:**
**Review Release Date:** n/a
**Review Release Event:** n/a
**Review Transfer Date:**
**Review Withdrawn Fields:** n/a
**SAS ID:** 1722913
**Secure:** OPEN
**Status:** NATIVE
**Subject:** TARAPUR FUEL STORAGE
**TAGS:** TECH, ENRG, PARM, IN
**To:** STATE
**Type:** TE
**vdkvgwkey:** odbc://SAS/SAS.dbo.SAS_Docs/3afa8662-c288-dd11-92da-001cc4696bcc
**Review Markings:**
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